

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Charlottesville Division**

J. DWAYNE PHILLIPS, <i>et als.</i> ,)	
)	
Plaintiffs,)	Civil Action No.
v.)	3:22-cv-00075- NKM-JCH
)	
RECTOR AND VISITORS)	
OF THE UNIVERSITY OF)	
VIRGINIA, <i>et als.</i> ,)	
)	
Defendants.)	

MOTION TO DISMISS OF DEFENDANTS FREDERICK AND HOFFMAN

Pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6), as well as 28 U.S.C. § 1367(c), Defendants Melissa Frederick and Katy Hoffman, who are sued only in their individual capacities and only for monetary judgments (collectively the “Individual Capacity Defendants”), respectfully move this Court to dismiss all claims alleged against them in the Amended Class Action Complaint (ECF No. 46) (“Amended Complaint”) on the following grounds:

I. Federal Claims (Counts I, II, III and IV)

1. Absolute quasi-judicial immunity bars Plaintiffs’ claims for monetary damages against the Individual Capacity Defendants.
2. Qualified immunity bars Plaintiffs’ claims for monetary damages against the Individual Capacity Defendants.
3. Plaintiffs (other than Ms. McCarthy) lack standing to assert any claim for relief against the Individual Capacity Defendants under the University of Virginia Health System’s 2022 Covid-19 vaccine policy and any such claims are not ripe for review.

4. Plaintiff McCarthy lacks standing to assert any claim for relief against the Individual Capacity Defendants under the University of Virginia Health System's 2021 Covid-19 vaccine policy.

5. The claims of Plaintiffs Phillips, Ehrlich, and Tyson are barred by estoppel.

6. Plaintiffs' federal claims for monetary damages against Ms. Frederick fail to meet the pleading standard in *Aschroft v. Iqbal*, 556 U.S. 662 (2000) (the "Iqbal standard").

7. Plaintiff McCarthy's federal claims for monetary damages against Ms. Hoffman fail to meet the *Iqbal* standard.

II. State Law Claims (Counts V, VI and VII)

1. As authorized by 28 U.S.C. § 1337(c), the Court should decline to exercise supplemental jurisdiction over Plaintiffs' state law claims against the Individual Capacity Defendants.

2. If the Court exercises supplemental jurisdiction over Plaintiffs' state law claims against the Individual Capacity Defendants, the Court should dismiss those claims for the same reasons that the federal law claims should be dismissed, as set forth in Part I of this motion.

3. If the Court exercises supplemental jurisdiction over Plaintiffs' state claims against the Individual Capacity Defendants, the Court should dismiss those claims because Virginia law does not recognize a cause of action for personal monetary liability arising from a violation of the religion clauses of the Virginia Constitution.

A Memorandum in Support of this Motion to Dismiss, along with a proposed Order, will be filed contemporaneously with this Motion.

WHEREFORE, Defendants Melissa Frederick and Katy Hoffman request that the Court dismiss all of Plaintiffs' claims against them in the Amended Complaint and award them such other and further relief as the Court deems proper.

March 20, 2023

Respectfully Submitted,

**MELISSA FREDERICK
KATY HOFFMAN**

By: /s/ William H. Hurd

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Counsel for Melissa Frederick and Katy Hoffman

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of March, 2023, a copy of the foregoing was filed via CM/ECF, which will automatically send electronic notification of such filing to all counsel of record.

/s/ William H. Hurd
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